

ESTATE OF OPIE SAMUEL BORDEAUX, SR.

IBIA 75-72

Decided February 10, 1976

Petition to reopen.

Granted.

1. Indian Probate: Reopening: Generally

The decision to reopen this estate is supported by the fact that the allegations made in the petition to reopen are not contradicted by other evidence appearing in the record and because the allocations can easily be proven by an examination of available witnesses and reliable documentary evidence.

2. Indian Probate: Reopening: Generally

Omission of an heir is a type of injustice which Departmental regulations permitting reopening were designed to correct.

3. Indian Probate: Reopening: Waiver of Time Limitation

Where probate was not undertaken until 10 years after decedent's death and the petitioner did not learn of the probate hearing until another 3 years later, the Board is not inclined to deny the petition to reopen for untimeliness.

APPEARANCES: A. M. Remerowski in behalf of petitioner, Harold Lee Kindle.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

On January 8, 1970, an Order Determining Heirs was entered in the Estate of Opie Samuel Bordeaux, Sr., deceased Rosebud Sioux --- Rosebud Sioux Allottee No. 6301 --- who died intestate on December 16, 1960. Decedent's heirs at law as declared by the January 8, 1970, order included two daughters and a son, Opie Bordeaux, Jr.

On June 4, 1975, Harold Lee Kindle, aka Harold Lee Bordeaux, filed a petition to reopen the above estate pursuant to 43 CFR Sec. 4.242(h). Petitioner alleges he is a son of the decedent omitted from the determination of heirs and that he received no notice of the probate hearing which was held October 7, 1969. By letter dated July 9, 1975, Administrative Law Judge Frederick W. Lambrecht recommended to the Board that the petition to reopen be granted and that a supplemental hearing be held to consider petitioner's claim.

[1] The Board has considered the circumstances set out by the petition and concludes that the possibility exists for correction of a manifest injustice by reopening the subject estate. The factors which support a reopening of this case include the following: First, the allegations made in the petition are not contradicted by other evidence appearing in the record. For example, only one witness testified at the brief hearing in this matter and she was not asked whether the decedent fathered any children by any person other than decedent's last wife. In this regard, the petitioner has alleged that at least one of the heirs present at the hearing, who was not called to testify, knew that the petitioner was a son of the decedent. Secondly, Helen Colombe, petitioner's aunt, provides detailed information in her affidavit accompanying the petition which fully supports petitioner's claim. The facts she alleges would seem to be easily proven by an examination of available witnesses and reliable documentary evidence.

[2, 3] Omission of an heir is the type of injustice which Department regulations permitting reopening were designed to correct. Nevertheless, public interest in the stability of titles and the value of leaving undisturbed Indian probate decision of long standing have, in many cases, outweighed the advantage of correcting such error. In addition, denials of petitions for reopening on the above grounds are also usually based on the premise that nondiligent actions should not be rewarded. Estate of Johnnie Holmes, 4 IBIA 175 (October 31, 1975). In the Bordeaux estate, however, where probate was not undertaken until 10 years after decedent's death and the petitioner did

not learn of the hearing until another 3 years later, the Board is not inclined to deny the petition for untimeliness. Nor are the countervailing public policy considerations noted above strong enough in this particular case to justify denial of the petition.

Although it also appears that it took the petitioner approximately 2 years to perfect a petition for reopening after learning of the heirship determination, the record reveals he objected in writing to the ruling as early as April 1, 1973, which was immediately after he learned of the order. Since it might have been possible for the Administrative Law Judge to treat the 1973 inquiry as a reopening request, the Board rejects the recommendation of the Administrative Law Judge that a supplemental hearing in this case also consider evidence of laches.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, and in accordance with the provisions of 43 CFR 4.242(h), IT IS ORDERED that the Petition to Reopen filed by Harold Lee Kindle, be, and the same is hereby GRANTED, and the Petition is hereby REMANDED to the Administrative Law Judge for further proceedings. On Remand, the Administrative Law Judge shall determine if the Petitioner is a lawful heir of the decedent, and if so found, he shall issue an appropriate order modifying distribution of decedent's estate.

This decision is final for the Department.

Done at Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

I concur:

Alexander H. Wilson
Administrative Judge